IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1074 OF 1998

Shri.Arun Sitaram Sankhe .. Petitioner
V/s
The Railway Goods Clearing &
Forwarding Establishments Labour
Board for Gr.Bombay & Ors. .. Respondents

Mr.R.S.Pai i/by Mr.Sanjay Udeshi & Co.for Petitioner.
Mrs.Lata S.Desai for Resp. Nos.1 and 2.

CORAM: F.I.REBELLO, &
S.P.KUKDAY, JJ.

DATE : 06.04.2005.

P.C.:

1. The petitioner was in the employment of Respondent No.1. He was earlier appointed as a Clerk, then Clerk-cum-Supervisor and finally as Inspector. He was chargesheeted for various charges. One of the charges was, that as a supervisor he failed to supervise the work of table clerk, pursuant to which dues from the Employer were not recovered and the Board had to suffer loss. The enquiry was conducted. It appears that, the evidence was led in respect of Charge I, Enquiry Officer submitted the report, finding the petitioner guilty as charged. Based on that, the disciplinary authority imposed punishment of dismissal from service. As Board is the disciplinary authority, there has been no appeal. The petitioner has filed the present petition.

2. Various challenges have been raised in the petition. On behalf of the petitioner the learned Counsel points

out that the matter was fixed for cross-examination on 15.10.1996. On that day, the cross-examination proceeded in the absence of the defence representative of the petitioner herein. It may be set out that the delinquent employee himself made a statement that he has no objection to proceed with the enquiry. It is further submitted that when the petitioner was cross-examined, the only witness examined on behalf of the employer and after question No.24, was prevented from asking any further questions and his cross-examination was closed. The petitioner has so specifically set out in paragraph No.18 of the petition. It is therefore submitted that the enquiry conducted was in violation of the principles of the natural justice and fairplay, as the petitioner did not have a fair hearing and consequently, the impugned order is liable to be set aside.

3. On the other hand, on behalf of the Respondents, the learned Counsel submits that it is not the enquiry officer who stopped the petitioner from asking questions, but the petitioner himself who made a statement that he has no further questions to ask and in these circumstances, the enquiry was closed. It is therefore submitted that no prejudice whatsoever has been occassioned to the petitioner herein and consequently, this Court ought not to enterfere with the punishment imposed.

4. Having heard the contentions as urged on behalf of

the petitioner and Respondents and considering both; the original marathi version as also the english translation, we are of the considered opinion that the correct interpretation of what is set out in the marathi version is that the petitioner was stopped from asking any further questions. In other words, the cross-examination of the only witness examined on behalf of the petitioner was closed without giving an effective opportunity to the petitioner to cross examine the witness. We are therefore of the opinion that this violated the principles of natural justice and fairplay, inasmuch as the petitioner has been denied a fair hearing, and consequently, the order of dismissal, based on the enquiry report which is based on evidence, which the petitioner had no opportunity, is liable to be set aside. Considering the law as now laid down by the Apex Court, if the enquiry is set aside on the ground of procedural illegalities it would not mean that the Respondents are barred from proceeding with the enquiry. It would be open to the Respondents to proceed with the enquiry from the stage of cross-examination of the witness who has been examined on behalf of the petitioner.

5. In so far as the back wages are concerned, we do not think, considering that the enquiry has to proceed, that the back wages should be awarded. However, as the order of punishment is set aside, the petitioner to apply to the Respondents for payment of subsistence allowance

during the period from the date of dismissal and for the present till the final order that may be passed by the disciplinary authority. It will be open to the Respondents, if so advised, within 15 days from now, to issue a fresh order of suspension. Rule made absolute accordingly. However, with no order as to costs.

(F.I.REBELLO, J.)

(S.P.KUKDAY, J.)